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CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

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ARIZONA CORPORATION COMMISSION



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AZ CORP COMMISSION
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DATE: JULY 9, 2001

DOCKET NO: T-03299A-96-0618

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Stephen Gibelli. The recommendation has been filed in the form of an Order on:

BUEHNER-FRY, INC. dba DIRECTDIAL USA
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JULY 18, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:


JULY 24, 2001 AND JULY 25, 2001

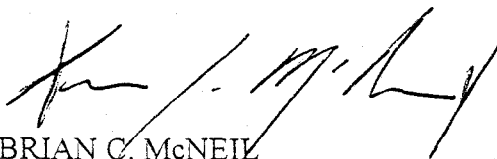
For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

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BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
CHAIRMAN

3 JIM IRVIN
COMMISSIONER

4 MARC SPITZER
COMMISSIONER

5
6 IN THE MATTER OF THE APPLICATION OF
BUEHNER-FRY, INC. D/B/A DIRECTDIAL USA
7 FOR A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
8 RESOLD INTEREXCHANGE
TELECOMMUNICATIONS SERVICES, EXCEPT
9 LOCAL EXCHANGE SERVICES

DOCKET NO. T-03299A-96-0618

DECISION NO. _____

ORDER

10 Open Meeting
July 24 and 25, 2001
11 Phoenix, Arizona

12 **BY THE COMMISSION:**

13 Having considered the entire record herein and being fully advised in the premises, the
14 Commission finds, concludes, and orders that:

15 **FINDINGS OF FACT**

16 1. On December 18, 1996, Buehner-Fry, Inc. d/b/a DirectDial USA ("BFI" or
17 "Applicant") filed with the Commission an application for a Certificate of Convenience and
18 Necessity ("Certificate") to provide competitive resold interexchange telecommunications services,
19 except local exchange services, within the State of Arizona.

20 2. In Decision No. 58926 (December 22, 1994), the Commission found that resold
21 telecommunications providers ("resellers") were public service corporations subject to the
22 jurisdiction of the Commission.

23 3. Applicant is a Nevada corporation, authorized to do business in Arizona since 1995.

24 4. Applicant is a switchless reseller, which purchases telecommunications services from
25 a variety of carriers.

26 5. On February 11, 1997 and on July 21, 2000, BFI filed Affidavits of Publication
27 indicating compliance with the Commission's notice requirements.

28 6. On September 13, 2000, the Commission's Utilities Division Staff ("Staff") filed its

1 Staff Report recommending approval of the application.

2 7. In its Staff Report, Staff stated that BFI provided financial statements for the year
3 ending May 31, 1999. These financial statements list assets of \$2.37 million, shareholders' equity of
4 \$79,421, and retained earnings of \$295,995. Based on the foregoing, Staff believes that Applicant
5 lacks adequate financial resources to be allowed to charge customers any prepayments, advances, or
6 deposits without either establishing an escrow account or posting a surety bond to cover such
7 prepayments, advances, or deposits. On June 9, 2000, BFI filed a letter indicating that it does not
8 charge its customers for any prepayments, advances or deposits. If at some future date, the Applicant
9 wants to charge customers any prepayments, advances or deposits, it must file information with the
10 Commission that demonstrates the Applicant's financial viability. Upon receipt of such filing, Staff
11 will review the information and the Commission will make a determination concerning the
12 Applicant's financial viability and whether customer prepayments, advances or deposits should be
13 allowed. Additionally, Staff believes that if the Applicant experiences financial difficulty, there
14 should be minimal impact to its customers. Customers are able to dial another reseller or facilities-
15 based provider to switch to another company.

16 8. Staff recommended approval of the application subject to the following conditions,
17 that:

18 (a) The Applicant should be ordered to comply with all Commission rules, orders,
19 and other requirements relevant to the provision of intrastate telecommunications
20 service;

21 (b) The Applicant should be ordered to maintain its accounts and records as
22 required by the Commission;

23 (c) The Applicant should be ordered to file with the Commission all financial and
24 other reports that the Commission may require, and in a form and at such times as the
25 Commission may designate;

26 (d) The Applicant should be ordered to maintain on file with the Commission all
27 current tariffs and rates, and any service standards that the Commission may require;

28 (e) The Applicant should be ordered to comply with the Commission's rules and
modify its tariffs to conform to these rules if it is determined that there is a conflict
between the Applicant's tariffs and the Commission's rules;

1 (f) The Applicant should be ordered to cooperate with Commission investigations
2 of customers complaints;

3 (g) The Applicant should be ordered to participate in and contribute to a universal
4 service fund, as required by the Commission;

5 (h) The Applicant should be ordered to notify the Commission immediately upon
6 changes to the Applicant's address or telephone number;

7 (i) If at some future date, the Applicant wants to charge any prepayments,
8 advances, or deposits, it must file information with the Commission that demonstrates
9 the Applicant's financial viability. Upon receipt of such filing, Staff will review the
10 information and the Commission will make a determination concerning the
11 Applicant's financial viability and whether customer prepayments, advances, or
12 deposits should be allowed;

13 (j) The Applicant's interexchange service offerings should be classified as
14 competitive;

15 (k) The Applicant's competitive services should be priced at the rates proposed by
16 the Applicant in its most recently filed tariffs. The maximum rates for these services
17 should be the maximum rates proposed by the Applicant in its proposed tariffs. The
18 minimum rates for the Applicant's competitive services should be the Applicant's total
19 service long run incremental costs of providing those services;

20 (l) In the event that the Applicant states only one rate in its proposed tariff for a
21 competitive service, the rate stated should be the effective (actual) price to be charged
22 for the service as well as the service's maximum rate; and

23 (m) The Applicant file its tariffs within 30 days of an Order in this matter, and in
24 accordance with the Decision.

25 9. The Staff Report also stated that Applicant has no market power and the
26 reasonableness of its rates would be evaluated in a market with numerous competitors.

27 10. On February 26, 2001, BFI filed updated financial information for the year ending
28 May 31, 2000. These statements list assets of \$1.98 million, negative stockholders' equity of
\$59,860, and retained earnings of \$156,714.

11. On June 1, 2001, BFI filed a letter indicating that it agrees to abide by the conditions
specified in the Staff Report.

12. On August 29, 2000, the Arizona Court issued its Opinion in US WEST
Communications, Inc. v. Arizona Corporation Commission, 1 CA-CV 98-0672, holding that "the

1 Arizona Constitution requires the Commission to determine fair value rate bases for all public service
2 corporations in Arizona prior to setting their rates and charges.”

3 13. On October 26, 2000, the Commission filed a Petition for Review to the Supreme
4 Court.

5 14. On February 13, 2001, the Commission’s Petition was granted.

6 **CONCLUSIONS OF LAW**

7 1. Applicant is a public service corporation within the meaning of Article XV of the
8 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

9 2. The Commission has jurisdiction over Applicant and the subject matter of the
10 application.

11 3. Notice of the application was given in accordance with the law.

12 4. Applicant’s provision of resold interexchange telecommunications services is in the
13 public interest.

14 5. Applicant is a fit and proper entity to receive a Certificate for providing competitive
15 resold interexchange telecommunications services in Arizona.

16 6. Staff’s recommendations in Findings of Fact No. 7 and 8 are reasonable and should be
17 adopted.

18 **ORDER**

19 IT IS THEREFORE ORDERED that the application of Buehner-Fry, Inc. d/b/a DirectDial
20 USA for a Certificate of Convenience and Necessity for authority to provide competitive resold
21 interexchange telecommunications services, except local exchange services, is hereby granted, except
22 that Buehner-Fry, Inc. d/b/a DirectDial USA shall not be authorized to charge customers any
23 prepayments, advances, or deposits. In the future, if Buehner-Fry, Inc. d/b/a DirectDial USA desires
24 to initiate such charges, it must file information with the Commission that demonstrates the
25 Applicant’s financial viability. Staff shall review the information provided and file its
26 recommendation concerning financial viability and/or the necessity of obtaining a surety bond within
27 thirty (30) days of receipt of the financial information, for Commission approval.

28 IT IS FURTHER ORDERED that Buehner-Fry, Inc. d/b/a DirectDial USA shall file the

1 following FVRB information within 18 months of the date that it first provides service following
2 certification. The FVRB shall include a dollar amount representing the total revenue for the first
3 twelve months of telecommunications service provided to Arizona customers by Buehner-Fry, Inc.
4 d/b/a DirectDial USA following certification, adjusted to reflect the maximum rates Buehner-Fry,
5 Inc. d/b/a DirectDial USA requests in its tariff. This adjusted total revenue figure could be calculated
6 as the number of units sold for all services offered times the maximum charge per unit. Buehner-Fry,
7 Inc. d/b/a DirectDial USA shall also file FVRB information detailing the total actual operating
8 expenses for the first twelve months of telecommunications service provided to Arizona customers by
9 Buehner-Fry, Inc. d/b/a DirectDial USA following certification. Buehner-Fry, Inc. d/b/a DirectDial
10 USA shall also file FVRB information which includes a description and value of all assets, including
11 plant, equipment, and office supplies, for the first twelve months of telecommunications service
12 provided to Arizona customers by Buehner-Fry, Inc. d/b/a DirectDial USA following certification.

13 IT IS FURTHER ORDERED that Buehner-Fry, Inc. d/b/a DirectDial USA shall comply with
14 Staff's recommendations as set forth in Findings of Fact Nos. 7 and 8.

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1 IT IS FURTHER ORDERED that within 30 days of the effective date of this Decision,
 2 Buehner-Fry, Inc. d/b/a DirectDial USA shall notify the Compliance Section of the Arizona
 3 Corporation Commission of the date that it will begin or has begun providing service to Arizona
 4 customers.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

7
 8
 9 CHAIRMAN

COMMISSIONER

COMMISSIONER

10
 11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
 12 Secretary of the Arizona Corporation Commission, have
 13 hereunto set my hand and caused the official seal of the
 14 Commission to be affixed at the Capitol, in the City of Phoenix,
 15 this ____ day of _____, 2001.

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 17 BRIAN C. McNEIL
 18 EXECUTIVE SECRETARY

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1 SERVICE LIST FOR: BUEHNER-FRY, INC. D/B/A DIRECTDIAL USA

2 DOCKET NO.: T-03299A-96-0618

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